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REPORT
OF
THE MARYLAND TAX REVISION COMMISSION OF 1939
ON
ADMINISTRATIVE REORGANIZATION

November 27, 1940

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The recommendations in this report have been tentatively approved by the Commission. Comments and criticisms are requested.

FINDINGS

Tax administration in Maryland is characterized by wide diffusion of responsibility. The net income tax (Ch. 277, Acts of 1939), both individual and corporate, and certain other important taxes are handled by the Comptroller's office at Annapolis. Other corporate taxes, including some forms of income taxation, are under the State Tax Commission in Baltimore and this Commission is also charged with the direct assessment of various types of property and the supervision of all local assessments. Estate and inheritance taxes are administered by the Registers of Wills of each of the twenty-three counties and Baltimore City, etc.

Central administration is perhaps undesirable with respect to all State taxes and the issue is not one between central as opposed to local administration. On the contrary the question is whether centrally administered taxes should be handled piecemeal or as a unit.

As to certain taxes there is also an improper combination of judicial and administrative functions. For example, the State Tax Commission is both an administrative and an appellate body and in many instances is required to pass upon assessments made under its direction by its own employees. The same improper combination of judicial and administrative functions occurs elsewhere in the system, most notably with regard to the Boards of County Commissioners which employ the local property assessors and hear appeals from the assessments which they make.

The present system of piecemeal administration inevitably leads to inefficiency, loss of revenue and unnecessary hardships on both taxpayers and administrative officials. The evil lies chiefly in the lack

of unified responsibility for taxes which are already centrally administered, and the issue is not one between local and central administration.

Information in the records of one administrative unit is not known to others and unnecessary loopholes are opened for tax evaders. Just as there is no pooling of information, there is no joint use of essential equipment, such as calculating machines and statistical services; and some of the administrative units are grossly unequipped for the work which they are supposed to do. There is no normal procedure for accumulating any but the most general statistics, and data essential to check the operation of many of the tax laws cannot be obtained without great effort and delays.

In addition an unnecessary burden is placed upon taxpayers who are required to file separate and often overlapping reports to different administrative units rather than dealing with one central body. Many corporations are required to file a return with the Comptroller as to their net income and another return with the State Tax Commission as to their gross income. Most liquor taxes are handled by the Comptroller, but returns as to the value of distilled spirits must be made to the State Tax Commission which assesses and administers a tax thereon.

The burden of taxes is not merely the money that must be paid. To many taxpayers a severe burden also results from the necessity of filing returns and from the accounting work which they require. Our present diffusion of tax administration unnecessarily increases this burden for taxpayers and administrative officials alike.

Units Administering Present State Taxes

The units administering State taxes and some of the more important of such taxes are as follows:

Comptroller:

- Admissions
- Gasoline
- Net Income
- Liquor
- Gross receipts of one railroad

State Tax Commission:

- Bonus
- Corporate shares
- Distilled Spirits
- Franchise
- Gross receipts (except of one railroad)
- Personal property of most corporations
- Savings bank deposits

County Commissioners of various Counties)

Bureau of Assessment, Baltimore City):

- Real and personal property (other than personal property of most corporations)

Insurance Commissioner:

- Insurance premiums and licenses

Commissioner of Motor Vehicles:

- Motor vehicle licenses, titling tax, etc.

State Racing Commission:

- Horse racing and betting

State Roads Commission:

- Billboards

Registers of Wills of Counties and Baltimore City:

- Estate, inheritance and executors' commissions

Clerks of Circuit Courts for Counties:

- Business and other licenses
- Official commissions
- Recordation

Clerk of Court of Common Pleas, Baltimore City:

- Business and other licenses

Clerk of Superior Court, Baltimore City:

- Official commissions
- Recordation

The above is limited to agencies administering State, as distinguished from local, taxes and does not include many regulatory commissions to which various types of license fees are payable. Nor does it include units administering health or conservation licenses, such as the State Department of Health, the University of Maryland and the State Conservation Department.

Reasons for Diffusion of Tax Administration

Some of our taxes originated many years ago and the method of their administration is the result of historical development, an example being inheritance taxes, which are handled through the various Registers of Wills in the Counties and Baltimore City. Some State taxes should still be administered locally. Other taxes form an integral part of systems of regulation, such as most of the motor vehicle taxes, and the law has allocated their administration to the regulatory agencies in question. However, many important State taxes are neither an integral part of a system of regulation nor properly susceptible of local administration, obvious examples being the net income tax, the insurance premiums tax, gross receipts taxes and corporation franchise and share taxes.

It was long ago recognized that there should be a central State agency to administer taxes which could not be properly handled locally and which were not an integral part of a system of regulation. As a result the present State Tax Commission was created in 1914 and it was contemplated that this body would be the focal point for central tax administration in the State.

The State Tax Commission consists of three members appointed by the Governor for staggered terms of six years, it being required that not more than two shall be of the same political party and that one shall

be a resident of the Eastern Shore, one a resident of the Counties of the Western Shore, and the third a resident of Baltimore City. The Commission has general supervision of local property assessments; corporate charters and documents relating thereto are recorded in its office; it assesses the personal property of most corporations, franchise taxes, gross receipts taxes (except in the case of one railroad), the share tax, the tax on distilled spirits, and the tax on savingsbank deposits; in addition it hears appeals from local property assessments.

Some features of the law creating the State Tax Commission have not worked well in practice, the most obvious deficiencies being as follows:

1. Combination of administrative and appellate functions.

The State Tax Commission is one of the most important administrative units in the State and is charged with the assessment of many taxes, including most of the taxes on corporations. In addition it acts as an appellate body with respect to the net income tax and local property assessments.

Where the Commission is acting in a strictly appellate capacity its findings as to the facts are conclusive, although appeals lie to the Courts on questions of law. Where, however, the assessment was made by the Commission or its employees, it has been necessary to allow an appeal to the Courts on questions of fact as well as on questions of law. The latter type of appeal throws upon the Courts the burden of weighing the evidence and, as appeals lie to the Circuit Courts of any of the Counties or Baltimore City, the effect is and has been to impair the uniformity which the creation of the Commission was intended to achieve.

This combination of appellate and administrative functions is opposed to sound theories of government. It has also worked badly in practice and has substantially decreased the effectiveness of the Commission. We accordingly recommend that the appellate and administrative functions of the Commission be separated and that the present members of the State Tax Commission be relieved of their administrative duties and be permitted to function as a Board of Tax Appeals. This will have the further advantage of permitting their decisions to be final on questions of fact, reserving a right of appeal to the Courts on questions of law.

2. Residence qualifications. We have noted above that only one member of the Tax Commission is appointed from Baltimore City and the effect has been to place almost the entire administrative burden on this member, even although such member has not always been the chairman of the Commission. The position of the other two members has developed into a part-time job with a normal attendance of only one or two days a week. No distinction is, however, made in the salaries of the members of the Commission on the basis of relative work performed, and all such salaries were originally fixed in contemplation of full-time work. In addition to its obvious unfairness, this practice has greatly reduced the efficiency of the Commission.

3. Relation to fiscal system. It is important to consider the proper function of a revenue department in our fiscal system. Since the adoption of the Budget Amendment to the State Constitution in 1916 (Section 52 of Art. III) the responsibility for the financial welfare of the State has rested primarily upon the Governor. He is required to submit to the legislature a detailed estimate of the revenues for the ensuing biennium, and a detailed estimate of proposed expenditures. The

legislature cannot increase any item of proposed disbursements. Any increase in expenditures can only be by way of a supplementary appropriation which must carry its special tax.

The budget system thus places on the Governor the responsibility for keeping the budget in balance, and for making correct estimates of revenue yields. In 1939, the position of Budget Director was created, in charge of budget and purchasing. This official is appointed by the Governor with indefinite tenure. It would seem logical that an appointee of the Governor should likewise head a department of revenue, since the credit side of the ledger is as important as the debit.

4. The function of the Comptroller. The Comptroller, as an elected official and a member of the powerful Board of Public Works, occupies an important position in the fiscal system of the State. Aside from his function of approving all disbursements from the Treasury and receiving all State revenues, he has broad powers in connection with the compromise of tax claims and refunds. We believe, however, that the actual assessment of taxes, particularly such a complicated one as the net income tax, should not be administered by him, but should be consolidated in a central assessing body, responsible to the Governor.

Experience in other States.

The trend in other States with regard to tax administration has been towards central or integrated administration. The strength of this movement is well expressed by the following quotation from James W. Martin of Kentucky in an article in the Tax Magazine of February, 1940:

"As an incident to the general movement for the reorganization of State administration, and to some extent as an off-shoot of the so-called tax commission movement, there has in the last two decades developed strong sentiment for the adoption of an integrated tax administration plan in each State. It is believed by students of government generally that both as a matter of economy and as a matter of sound governmental relationship with the public, one tax administration agency should replace the heterogeneity which in many States scattered revenue collections among half a dozen or more different departments. The movement towards integration of State tax administration has become very much more vigorous in the past few years. In some States, it has developed gradually; and in several States it has become reasonably complete at the present time."

The recent examples of Minnesota and Wisconsin may be noted. In 1939 both these States set up departments of taxation under a single commissioner, in place of the 3-man commissions which had existed in each for many years. A Board of Tax Appeals composed of three members was created in each State with power to review and redetermine orders or decisions of the Commissioner of Taxation upon appeal, the members being appointed by the Governor for 6 year staggered terms. The Commissioner is in each instance appointed by the Governor for 6 years, his salary being fixed at \$6,000 per annum in Minnesota and \$7,000 in Wisconsin. In the same year Minnesota, like Maryland, combined the budget and purchasing departments under a single head. (See as to the above, Chapter 431 of the Minnesota laws of 1939, Chapter 412 of the Wisconsin laws of 1939, and Nat. Tax. Assn. Bulletin, Vol. XXV, No. 9, June 1940, p 25).

RECOMMENDATIONS

The Tax Revision Commission recommends the following changes in the existing system of State tax administration:

1. The creation of a new department of Revenue and Taxes to be headed by a Director appointed by the Governor, to hold office as long

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as he performs his duties in a competent manner. A salary of \$7,000 per annum is suggested.

2. The State Tax Commission shall be continued with the present terms and salaries, without geographical or political limitation, but shall be called the Board of Tax Appeals. Its functions shall be quasi-judicial, sitting as a board of tax appeals not only on local assessments (as at present) but on appeals from departmental and other assessments, with authority to review facts, provision to be made for further appeal to the Courts on questions of law.

3. The Director should have the services of an accountant and an engineer as a permanent part of his staff. There should also be a bureau of research and statistics under his direct control, and he should appoint all personnel of the Department subject to the provisions of the Merit System.

4. There should be a number of separate bureaus under the Director, headed by a competent chief in each case, to include: (a) property taxes and valuations, (b) corporate taxes (including bonus, franchise, share, income, and insurance premium taxes), (c) individual income, (d) inheritance and estate, and (e) business licenses, including the tax on admissions.

These changes contemplate the transfer to the new Department of the present administrative functions of the State Tax Commission and those of the Comptroller with respect to the income tax and the one gross receipts tax now administered by him. Obvious advantages of these transfers will be to lodge the records and returns in a single office and to minimize the number of returns required of taxpayers.

5. As to licenses, it is important to distinguish between those designed to regulate, and those that are purely revenue measures. If the purpose is regulatory, the fee should not ordinarily exceed the cost, and if a surplus is shown over the expense of the service, then the fee should be reduced, unless the amount of the fee is deliberately designed to effectuate a governmental policy (as, for example, to promote the use of beer as opposed to whiskey). If the purpose is merely to raise revenue, the amount should be fixed so as to collect from a particular group or industry a ratable contribution to the general cost of government, and there should be no effort to regulate under the guise of taxation, or to favor one group or industry at the expense of another.

It is contemplated that State business licenses will be issued through the clerks of court as heretofore, but that application forms will be prescribed by the State Department and the original or a duplicate of each forwarded to it. This will enable the compilation of data for the purpose of disclosing and facilitating desirable modifications of such licenses.

6. We believe that, for the present at least, the Commissioner of Motor Vehicles should continue to collect all motor vehicle revenues and the titling tax, because of the fact that these are special funds and the present system is largely regulatory and is integrated with the trial magistrate system. We likewise propose no change in the administration of the gasoline tax and alcoholic beverage taxes by the Comptroller.

7. We recommend no change in the collection or assessment of the taxes and licenses for conservation or health purposes.

8. The bureau of inheritance and estate taxes would function by requiring every executor, administrator, or other person making distribution of property of a decedent, to file a return showing the property distributed, together with supporting documents. The bureau would then assess and certify the assessment to the respective Registers of Wills for collection. Appeals would lie to the Board of Tax Appeals rather than to the Orphans' Courts.

9. The bureau of property taxes would assess tangible property of all corporations, operating property of utilities, and assist the local assessors in valuing real and personal property.

10. The admissions tax would be administered on the basis of reports made to the new Department rather than to the Comptroller.

The proposal for a new tax department should not be taken as critical of the present administration of the Comptroller or the Tax Commission. The primary function of the Comptroller is to approve all vouchers drawn on the Treasury, and as a member of the Board of Public Works he exercises supervisory authority over all the State Departments, under Chapter 64 of the Acts of 1939. We feel that the Comptroller should be relieved of the duties of tax assessment. This is foreign to the nature of his office and necessarily infringes on the other important work which he is required to perform. We also have in mind the transfer to the new Department of existing personnel handling tax matters in the offices of the Comptroller and of the State Tax Commission.

We think that the hearing of appeals under the new set-up will occupy the full time of the Board of Tax Appeals (now members of the State Tax Commission) and that the separation of judicial and administrative functions is not only desirable as a matter of policy but will enable the Board to concentrate on appellate work.

